



Bryan Rutherford  
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## **Bryan Rutherford, Associate**

Bryan Rutherford practices in state and federal trial and appellate courts, primarily in matters arising from commercial disputes, first-party insurance litigation, construction litigation, and nursing home litigation.

In his civil practice, Bryan has briefed appeals on a wide variety of issues to the Texas Supreme Court, the intermediate Texas appellate courts, and the U.S. Court of Appeals for the Fifth Circuit, as well as representing clients in trial courts in many Texas counties and all four Texas federal districts. Bryan also aids other litigators in drafting jury charges, substantive trial briefing, and preserving appellate error.

As a former Dallas County Assistant District Attorney, Bryan was lead counsel on over seventy-five criminal appeals and regularly represented the State of Texas in oral argument before the Dallas Court of Appeals. Additionally, Bryan responded to requests for post-conviction DNA testing in noncapital cases, appearing as first chair prosecutor in Dallas County's felony courts.

### **Education and Professional Background**

South Texas College of Law,  
Juris Doctor, 1999

Southern Methodist University,  
Bachelors of Arts, 1994

### **Admitted to Practice**

Texas, 2000

U.S. Supreme Court

U.S. Court of Appeals for the Fifth  
Circuit

U.S. District Court, Northern, Eastern,  
Southern, and Western Districts of  
Texas

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### **Representative Experience**

- Won appeal for dental college and oral surgeon. Plaintiff sued an oral surgeon and dental college under the Texas Tort Claim Act, for alleged injuries sustained during a surgical procedure conducted at the college by the oral surgeon. Trial court found there was no evidence the oral surgeon's use or misuse of equipment and instruments caused Plaintiff's alleged injuries. The Tenth Court of Appeals affirmed the trial court's orders, dismissing the oral surgeon and granting the dental college's motion for summary judgment based on sovereign immunity. *Miers v. Texas A&M Univ. Sys. Health Science Ctr.*, \_\_\_ S.W.3d \_\_\_, No. 10-08-00183-CV (Tex. App.--Waco, December 30, 2009, no pet.).
- Successfully defended two clients in a product liability and construction defect in trial involving a roof collapse in which the plaintiffs asked the jury for almost \$30 million in damages. After a three and a half week trial, the jury returned a finding of no liability on the design defect claim, and awarded zero damages for the fair market value of the plaintiffs' businesses. The jury did return a small damage finding in favor of the plaintiffs, but since they found our clients only 9% and 19% responsible, the result was an award far less than the plaintiffs' pre-trial demands and the settlement offer made after the commencement of trial.
- On appeal, successfully defended summary judgment in favor of premises owner in suit filed by a plaintiff who sustained severe brain damage after falling from a loading dock. *Smith v. Mohawk Mills, Inc.*, 260 S.W.3d 672 (Tex. App.--Dallas 2008, no pet.).
- On appeal with oral argument, successfully defended jury verdict in favor of dentist alleged to have negligently caused injury to patient plaintiff. *Ward v. Peet*, No. 05-06-01029-CV, 2007 Tex. App. LEXIS 8947 (Tex. App.--Dallas 2007, no pet.) (mem. op.).
- Won dismissal for Nursing Home Defendant on Appeal in case in which plaintiff alleged the nursing home negligently allowed the decedent resident to sustain fatal injuries.
- Obtained summary judgment on behalf of a trucking company against the intoxicated driver of a vehicle that collided with a tractor truck, and

successfully defended that summary judgment on appeal. See *Martinez v. Swift Transp. Co.*, No. 10-06-00012-CV, 2006 Tex. App. LEXIS 9702 (Tex. App.–Waco, November 8, 2006, no pet.) (memorandum opinion).

- After receiving \$21.5 million settlement demand from plaintiffs-petitioners, filed briefing on the merits in the Texas Supreme Court in opposition to plaintiffs, who sought review of a summary judgment affirmed by the intermediate appellate court; the Texas Supreme Court denied review to plaintiffs, who took nothing on appeal.
- From 2000 to 2002, successfully represented the State of Texas on over 70 criminal appeals, including twelve set for oral argument. See, e.g., *Davis v. State*, No. 05-98-01104-CR, 2001 Tex. App. LEXIS 2966, (Tex. App.–Dallas, May 8, 2001, pet. ref'd) (bribery) ; *Brockman v. State*, No. 05-01-00064-CR, 2002 Tex. App. LEXIS 139 (Tex. App.–Dallas, January 10, 2002, pet. ref'd) (capital murder).
- Successfully won a summary judgment on behalf of an engineering firm, arguing that a waiver of subrogation clause contained in a design-build contract between a structural engineer and a general contractor precluded the general contractor's insurer from asserting a subrogation right for a property damage claim paid under a commercial general liability policy after construction was completed. The summary judgment also awarded the engineering firm's attorney's fees, expenses, and costs of court per a provision in the contract.
- Pending appeal of a default judgment against defendant insurance company, achieved settlement for actual damages of alleged insured's claims against defendant for lapse in coverage, vacating default judgment against insurer for actual damages, exemplary damages, and attorney's fees.
- As first-chair, obtained a defense judgment in a non-jury employment trial in Denton County.
- As first-chair, obtained a unanimous defense verdict for the commercial lessee in an eviction suit in Dallas County.

### Professional Affiliations

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Dallas Bar Association, Appellate Section  
Texas Bar Association, Appellate and Insurance Sections  
Texas District and County Attorneys Association  
Texas Association of Defense Counsel

### Honors and Recognitions

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Selected as a *Texas Monthly* Rising Star, 2007, 2008, 2009 and 2010

Eagle Scout, Boy Scouts of America

### Selected Publications and Presentations

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- *Texas Supreme Court Update*, presented at Business and Insurance Litigation Update, October 2009
- *Chapter 74: Interlocutory Appeals and Original Proceedings*, presented to the Dallas Bar Association Appellate Law Section, October 2008
- *Sexually Oriented Businesses: Texas' Dirty Dirty Feeling*, presented at the Texas District and County Attorneys Association's 1999 Civil Law Seminar

- Frequent speaker on electronic discovery issues

### **Civic and Volunteerism**

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Reappointed to serve on the City of Dallas Judicial Nominating Commission for the 2009–2011 term

Member, City of Dallas Judicial Nominating Commission, Appointed by Council Member Angela Hunt and the Dallas Bar Association's Board of Directors (2007–2009 term)